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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON EDWARD THOMAS CARDIFF,

Defendant.

No. 5:23-CR-00021-JGB

**GOVERNMENT'S OPPOSITION TO
DEFENDANT'S AND SURETIES'
MOTIONS TO SET ASIDE OR
MODIFY JUDGMENT**

Date: April 28, 2025
Time: 2:00 p.m.
Courtroom: 1

Plaintiff United States of America, by and through its counsel of record, the Consumer Protection Branch of the United States Department of Justice and Trial Attorney Manu J. Sebastian, and the

United States Attorney for the Central District of California and Assistant United States Attorney Valerie L. Makarewicz, hereby submits this Opposition to Defendant's and Sureties' motions to set aside or modify judgment. Dkts. 220-221.

Dated April 7, 2025:

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jason Cardiff remains a fugitive and is in contempt of numerous court orders requiring him to return to the United States. He continues to violate his bond conditions daily and now forewarns that he intends to remain a fugitive in Ireland for an additional "several months." Def. Mot. At 8:7-8 (emphasis added). As argued previously in the government's motion for bail forfeiture and related reply, justice requires forfeiture in this case and the forfeiture should not be set aside or modified. Dkts. 189, 204. Defendant's and his sureties' motions should be denied.

II. STATEMENT OF FACTS

A. Initial Proceedings

On January 31, 2023, a grand jury handed down an indictment charging Defendant with Access Device Fraud, Aggravating Identity Theft, and Obstruction. Dkt. 1.

On November 26, 2023, Defendant was arrested at Los Angeles International Airport when he returned to the United States from Ireland. Dkt. 10. Defendant is a dual citizen of the United States and Ireland and resided in Ireland for almost two years prior to his arrest. Dkt. 90.

On November 29, 2023, the government filed a memorandum of points and authorities in support of its request for pretrial detention. Dkt. 13. In its filing, the government detailed Defendant's history of deception and dishonesty in the representations he made to the Court in his civil case. Id. The government notified the Court that Defendant posed a flight risk as he had been held in contempt by Judge Otero and jailed when he

1 procured a second Irish passport after the Court confiscated his
2 original Irish passport. Dkt. 13-3 at 38. Defendant had also sold his
3 residence in the United States and had limited ties in the United
4 States since he moved to Ireland. Dkt. 13. The government alerted the
5 Court to Defendant's statements upon arrest where he informed the
6 arresting agents that the statute of limitations relating to the
7 crimes he had committed had expired. Dkt. 13 at 9-10. The government
8 also provided Defendant's posts on social media illustrating his
9 claims that he was a billionaire and millionaire that lived a lavish
10 lifestyle, including photos and videos of his Rolexes and travel on a
11 private plane. Dkt. 13-5.

12 On November 30, 2023, the United States Probation and Pretrial
13 Services Office ("USPO") submitted a Pretrial Services Report to the
14 Court with a finding that that Defendant was a flight risk. Dkt. 90.
15 USPO recommended an appearance bond in the amount of \$750,000 with
16 full deeding of two properties owned by Ms. Cochell. Id.

17 That same day, the Court, after careful consideration of the
18 facts, statements made by Defendant, his criminal defense attorney at
19 the time, and Stephen Cochell, and the concern that Defendant was not
20 offering any of his own assets as collateral for his bond, ordered
21 that Defendant be released on a \$530,000 bond, of which \$500,000 was
22 to be secured with full deeding of property belonging to Lilia
23 Cochell. Dkt. 14; see also Dkt. 90. The Court accepted Brian Kennedy
24 as the surety that would be responsible for the remaining unsecured
25 \$30,000. Dkt. 90. The Court reasoned that the decisions were based on
26 Defendant's lack of "skin in the game" and the unusual nature of the
27 bond package. Id.

1 The Court also issued, among others, the following additional
2 conditions of release: (1) submit to the United States Probation and
3 Pretrial Services supervision; (2) surrender all passports and travel
4 documents; (3) restrict travel to the Central District of California
5 and the Southern District of Texas (and travel points between the
6 two) unless approved by the Court; (4) reside as approved by the
7 Supervising Agency and not relocate without prior permission of the
8 Supervising Agency; (5) participate in the Location Monitoring
9 Program; (6) remain in an approved residence from 8:00 p.m. to 8:00
10 a.m.; and (7) be placed in the third-party custody of Mr. Cochell.
11 Dkt. 14. Defendant acknowledged and signed the bond and conditions of
12 release that same day. Id. Defendant did not dispute either the bond
13 amount or the conditions of release. Dkt. 90.

14 On December 4, 2023, the government conducted a phone call with
15 Ms. Cochell to ensure she fully understood her obligations as a
16 surety for Defendant. See Ex. 1, Memorandum of Interview of Lilia
17 Murphy aka Lilia Cochell. Mr. Cochell attended and participated in
18 the conference call. Id. The government informed Ms. Cochell of
19 Defendant's bond conditions, and that the government would move
20 against Ms. Cochell's residence if Defendant violated his bond
21 conditions or failed to appear for a hearing. Id. Ms. Cochell twice
22 acknowledged that she understood the responsibilities and
23 repercussions of serving as Defendant's surety. Id.

24 On December 5, 2023, Defendant filed a signed affidavit of
25 surety in which Mr. Kennedy acknowledged that he agreed to accept the
26 responsibilities of surety for Defendant's release. Dkt. 22. The next
27 day, Defendant filed a signed affidavit of surety in which Ms.
28 Cochell acknowledged that she agreed to accept the responsibilities

1 of surety for Defendant's release. Dkt. 24. Shortly thereafter,
2 Defendant filed a Deed of Trust executed by Ms. Cochell listing the
3 Clerk of the Court as the Beneficiary. Dkt. 28. Defendant was then
4 released from pre-trial custody.

5 **B. Defendant's Motions to Dismiss**

6 On April 8, 2024, Defendant filed his first motion to dismiss,
7 which the Court denied on June 13, 2024. Dkts, 45, 79. On September
8 9, 2024, Defendant filed his second motion to dismiss as well as a
9 motion to suppress evidence. Dkts. 106-107. On October 21, 2024, the
10 Court issued oral tentative rulings denying both motions. Dkt. 142.

11 On December 2, 2024, Defendant filed his third and fourth
12 motions to dismiss. Dkt. 134-137. On January 30, 2025, the Court
13 informed counsel that a ruling would be issued on both motions. Dkt.
14 198.

15 **C. Defendant's Motions to Stay His Return to the United States
16 and Violation of Conditions of his Bond**

17 Meanwhile, Defendant requested and was granted numerous travel
18 requests. Beginning in July 2024, the Court permitted Defendant to
19 travel to Ireland. On July 25, 2024, the Court granted Defendant's
20 request to travel to Ireland for ten days. Dkts. 87, 94. On September
21 4, 2024, the Court granted Defendant's request to travel to Ireland
22 for fourteen days. Dkts. 103, 105. On October 29, 2024, the Court
23 granted Defendant's request to travel to Ireland for fourteen nights.
24 Dkts. 122, 124. On November 20, 2024, the Court granted Defendant's
25 request to extend his travel in Ireland for 30 days. Dkts. 125, 127,
26 131-132, 133. On December 20, 2024, the Court granted Defendant's
27 request to extend his travel in Ireland for another 30 days. Dkts.
28 148-149, 151. The Court ordered Defendant to return to the United

1 States by January 19, 2025, and informed the Defendant that the Court
2 was unlikely to grant future requests to travel or extend travel
3 absent extenuating circumstances. Id. On January 10, 2025, in
4 response to Defendant's ex parte application to continue the hearing
5 date on his third and fourth motions to dismiss from January 13, 2025
6 to January 27, 2025, the Court granted the request, but ordered
7 Defendant to personally appear on the new hearing date. Dkts. 160-
8 161. On January 14, 2025, Defendant filed an ex parte request to
9 remain in Ireland for another four months, which the Court denied.
10 Dkts. 162, 165.

11 On January 16, 2025, Defendant filed a motion for
12 reconsideration with multiple exhibits, which the Court denied. Dkts.
13 166-169, 171. The Court again ordered Defendant to return to the
14 United States from Ireland by January 19, 2025. Dkt. 171. On January
15 18, 2025, Defendant filed an ex parte application for an extension of
16 his reporting date, which the Court denied. Dkts. 172-173, 175-176.
17 On January 22, 2025, the Court filed a scheduling notice continuing
18 the motion hearing from January 27 to January 30. Dkt. 177. Defendant
19 failed to return to the United States on January 19, 2025, as
20 ordered, and failed to appear at the motion hearing on January 30,
21 2025, as ordered. Dkt. 198.

22 On February 5, 2025, the Court declared Defendant a fugitive,
23 vacated the trial date, tolled the Speedy Trial Act, and issued an
24 arrest warrant. Dkt. 196.

25 On March 11, 2025, the court ordered the bond forfeited against
26 Defendant in the amount of \$530,000, with Lilia Cochell to be jointly
27 and severally liable with Defendant in the amount of \$500,000, and
28

1 Brian Kennedy to be jointly and severally liable with Defendant in
2 the amount of \$30,000. Dkt. 214.

3 To date, Defendant has not returned to the United States and
4 remains a fugitive. See Dkt. 220.

5 **III. LEGAL STANDARDS**

6 "The purpose of enforcing the terms of bonds. . . is to
7 increase the likelihood, generally, that defendants and sureties will
8 take their bond commitments seriously and defendants will attend
9 scheduled court appearances." United States v. Famiglietti, 548 F.
10 Supp. 2d 398, 407 (N.D. Cal. March 28, 2008), report and
11 recommendation adopted, 548 F. Supp. 2d 398 (S.D. Tex. Apr. 21,
12 2008); United States v. Vaccaro, 51 F.3d 189, 192 (9th Cir. 1995)
13 ("[G]enerally 'the purpose of a bail bond is to insure that the
14 accused will reappear at a given time.'") (quoting United States v.
15 Toro, 981 F.2d 1045, 1049 (9th Cir. 1992) (cleaned up)). The surety's
16 "one simple obligation" is to assure the defendant's "appearance when
17 promised." United States v. Nguyen, 279 F.3d 1112, 1117 (9th Cir.
18 2002).

19 If there is a breach of a condition of bond, the Court must
20 declare the bail forfeited. Fed. R. Crim. Pro. 46(f)(1). "The
21 forfeiture is thus mandatory." Nguyen, 279 F.3d at 1115 (citing
22 United States v. Abernathy, 757 F.2d 1012, 1015 (9th Cir. 1985)). A
23 Court may direct that a forfeiture be set aside in whole or in part
24 or remitted if the defendant is surrendered into custody by the
25 surety or if it otherwise appears that justice does not require the
26 forfeiture. Fed. R. Crim. P. 46(f)(2) and (4).

1 In the rare instances where a court exercises its discretion to
2 set aside or remit bond, the Ninth Circuit considers six non-
3 exclusive factors:

4 1) the defendant's willfulness in breaching a release
5 condition; 2) the sureties' participation in
6 apprehending the defendant; 3) the cost, inconvenience,
7 and prejudice suffered by the government; 4) mitigating
8 factors; 5) whether the surety is a professional or a
9 member of the family or a friend, and 6) the
10 appropriateness of the amount of the bond.

11 United States v. Murphy, No. 19CR00043YGRDMR, 2020 WL 790407, at *6
12 (N.D. Cal. Feb. 18, 2020) (citing United States v. Amwest Sur. Ins.
13 Co., 54 F.3d 601, 603 (9th Cir 1995)); see also Nguyen, 279 F.3d at
14 1115. The district court's decision is reviewed for abuse of
15 discretion. Amwest, 54 F.3d at 602.

16 Moreover, remission is not appropriate, and forfeiture of a bond
17 should be enforced, where a defendant remains at large as a fugitive
18 from justice. "Remission of forfeited bonds while their subjects are
19 still at large would undermine" the purpose of the bail bond, which
20 is to assure the presence of the accused. See United States v.
21 Skipper, 633 F.2d 1177, 1180 (5th Cir. 1981).

22 **IV. ARGUMENT**

23 Many, if not all, of the Amwest factors favor the government.
24 First, Defendant willfully breached his release conditions and
25 remains a fugitive in violation of multiple orders from this Court.
26 Second, Defendant's sureties have not attempted to apprehend him,
27 even after the Court entered judgment. Third, the government has and
28 continues to suffer cost, inconvenience, and prejudice. Fourth, there
are no mitigating factors that favor Defendant or his sureties.
Fifth, Defendant's sureties filed declarations confirming that they

1 were aware of the responsibilities and risks associated with serving
2 as sureties. Sixth, the bond amount was reasonable considering
3 Defendant's risk of flight and foreign ties. Justice requires
4 forfeiture, and Defendant's and his sureties' motions should be
5 denied.

6 **A. Defendant Willfully Breached His Release Conditions and**
7 **Remains in Breach**

8 This Court carefully considered Defendant's medical
9 documentation and rejected his contention that he could not return to
10 the United States. Dkts. 151, 161, 165, 171, 176. Defendant's refusal
11 to return is therefore willful.¹ See Nguyen, 279 F.3d at 1115.

12 "A breach that consists of fleeing to another country and
13 remaining there indefinitely as a fugitive cuts to the core of the
14 system Congress established." Famiglietti, 548 F. Supp. 2d at 410. By
15 failing to return to the United States, Defendant not only failed to
16 appear for a hearing as the Court required but also willfully
17 violated and continues to violate all seven of the release conditions
18 listed above. Defendant has not been and currently is not under the
19 supervision of the United States Probation and Pretrial Services.²

20
21 ¹ Unlike in Nguyen, Defendant, here, refused to allow the
22 government to verify the veracity of his medical documentation.
23 According to the limited information on the record, Defendant's
24 medical providers have only indicated that "reduced cabin pressure
25 and lower oxygen availability at altitude would greatly increase the
26 potential for . . . complications." Def. Mot. At 3:25-26 (internal
27 citation omitted). Nothing in the records addresses why Defendant has
28 refused to return to the United States using another mode of
transportation, such as travel by boat.

26 ² Defendant's failure to return to the United States on January
27 19, 2025, resulted in the Sr. United States Probation Officer in the
28 Southern District of Texas to close his case. Ex. 2, February 6, 2025
Email from USPO Officer. The United States Probation Officer in the
Central District of California confirms that Defendant has had
limited contact with USPO. Ex. 3, Apr. 4, 2024 Email from USPO
Officer.

1 Dkts. 21, 151; See Exhibits 2-3. Defendant failed to surrender his
2 passport and travel documents by January 19, 2025, as the Court
3 previously ordered, and he continues to possess his passport. Dkts.
4 21, 151. Defendant fails to restrict travel to the Central District
5 of California and the Southern District of Texas (and travel points
6 between the two). Dkts. 21, 178. Defendant has not been and is not
7 currently residing as approved by the Supervising Agency. Dkts. 21,
8 178, 193, 199, 201, 208, 220, 221. He relocated to Ireland without
9 prior permission of the Supervising Agency and this Court. Id.
10 Defendant failed and continues to fail to adhere to a curfew at an
11 approved residence. Id. Defendant failed to have his ankle monitor
12 replaced and fails to participate in the Location Monitoring Program.
13 Dkts. 21, 151, 178. Defendant failed to return and fails to be in the
14 third-party custody of Stephen Cochell. Dkts. 21, 178, 193, 199, 201,
15 208, 220, 221.

16 The facts of Nguyen are strikingly similar to the ones at issue
17 here. During sentencing, the court granted Nguyen's request to remain
18 free on bond "for a few extra weeks to care for his sick wife,"
19 contingent on a scheduled self-surrender date. Nguyen, 279 F.3d at
20 1114. Days before the surrender date, the defendant requested to
21 postpone his surrender date, which the court denied. Id.
22 Nevertheless, the defendant did not surrender himself and argued that
23 he was unable to surrender due to medical problems. Id. The
24 defendant's attorney and surety continued to file motions to stay the
25 surrender but the district court found "that the ***motions raised***
26 ***nothing new***, based as they were on the same grounds that had been
27 previously rejected." Nguyen, 279 F.3 at 1114-1115 (emphasis added).
28 Following the district court's application of the six factors laid

1 out in Amwest, the Ninth Circuit affirmed the entire bond forfeiture.
2 Id. at 11118; See Amwest, 54 F.3d at 602.

3 Defendant's motion to set aside moves the goalposts on when
4 Defendant claims he will return to the United States and this Court
5 should have no confidence that Defendant will ever return of his own
6 volition. Initially, Defendant claimed he needed three to four months
7 of treatment in his January 24, 2025 filing. Dkt. 178. In his March
8 20, 2025 filing, however, Defendant claims that bail forfeiture can
9 be "deferred or stayed for several months while his doctors complete
10 the course of treatment necessary for his return." Def. Mot. At 8:7-8
11 (emphasis added). Defendant's admission that he will not return for
12 at least an additional "several months" demonstrates that defendant
13 will return to the United States at a time of his choosing, if at
14 all. If the bond forfeiture is set aside, any pressure to return to
15 the United States will be completely extinguished and he will remain
16 a fugitive. See Famiglietti, 548 F. Supp. 2d at 409.

17 Accordingly, Defendant's motion and his sureties' motion must be
18 denied.

19 **B. The Sureties Have Not Participated in Apprehending**
20 **Defendant**

21 For this factor to weigh in favor of the sureties, the sureties
22 must demonstrate **active participation** in Defendant's apprehension.
23 Amwest, 54 f.3d at 603-604. While the facts in Amwest "indicate that
24 [the sureties] did cooperate with the marshal, it does not
25 demonstrate that [they] made affirmative efforts to recapture [the
26 defendant], or to otherwise participate in his apprehension." Amwest,
27 54 F.3d at 604. Without active participation in apprehension of the
28

1 defendant by the sureties in Amwest, the court found that this factor
2 did not favor the sureties. *Id.* at 605.

3 Similarly, other than a few phone calls to Defendant, the
4 sureties in this case admitted in their motions and declarations that
5 they have not participated in Defendant's apprehension. Dkts. 199,
6 221. Even after the court entered a judgment against them, the
7 sureties continue to fail to actively participate in Defendant's
8 apprehension and he remains a fugitive to this day. Therefore, this
9 factor does not favor the sureties.

10 **C. The Government Suffers Cost, Inconvenience, and Prejudice**

11 "[W]here there has been cost and inconvenience to the
12 government (as there was here) the amount need not be specified."
13 Amwest, 54 F.3d at 604. "The government has no obligation to furnish
14 a bill of costs, nor can the cost and inconvenience factor be
15 dismissed simply because they were not substantial." See Nguyen, 279
16 F.3d 1112 at 1117 (internal citation omitted).

17 Defendant and his sureties concede that this factor favors the
18 government. Dkts. 199 at 9:14-15, 201 at 5:11-13; Sur. Mot. at 6:26-
19 27. Since Defendant was ordered to return to the United States on
20 December 20, 2024, the Government has been required to respond to
21 numerous frivolous motions by the Defendant, all of which were meant
22 to delay his return to the United States. See Nguyen, 279 F.3d at
23 1117. Every motion was denied by the Court. Like in Nguyen,
24 Defendant's disingenuous motions caused the government cost and
25 inconvenience. Id. "All of this time could have been spent on the
26 prosecution of the merits of this case, or on other cases." Murphy,
27 No. 19CR00043YGRDMR, 2020 WL 790407, at *8.

1 Defendant's failure to return to the United States greatly
2 prejudices the prosecution's preparations for trial as witnesses'
3 memories fade over time. See Famiglietti, 548 F. Supp. 2d at 413. In
4 Famiglietti, the court also found that the government would need to
5 expend significant resources and there would be undue delay as the
6 United States would need the cooperation of a foreign government to
7 secure the defendant's arrest and extradition. Id. "Thus, the
8 government's entitlement to try the case - and its duty to try the
9 case fairly -- are imperiled." Id. In addition, any restitution to
10 the victims of Defendant's fraud is also delayed and at risk.

11 **D. There are No Mitigating Factors**

12 Defendant and his sureties fail to articulate any mitigating
13 factors that support setting aside or modifying the judgment against
14 them.

15 Defendant claims his purported medical issues are a mitigating
16 factor. Def. Mot. At 6. As discussed above, this Court determined
17 that Defendant's purported medical issues do not excuse him from
18 appearing in court nor do they permit him to violate his release
19 conditions. Dkts. 151, 161, 165, 171, 176.

20 The sureties argue that a mitigating factor in their favor is
21 the fact that they are not responsible for Defendant's breach of
22 release conditions. Sur. Mot. at 7-9. The sureties fail to provide
23 any authority that supports such a contention. The sureties seek to
24 be rewarded for not assisting Defendant in breaking the law. This is
25 not a mitigating factor.

26 The government understands that Ms. Cochell may lose her home,
27 but the Ninth Circuit has explicitly refused to adopt a "loving
28

relative" exception in its bail forfeiture jurisprudence. Nguyen, 279 F.3d at 11117 n.2.

Ninth Circuit jurisprudence prevents the court from considering as a mitigating factor the effect the forfeiture would have on the sureties-even if that effect would be devastating and the amount of money forfeited to the government clearly was much greater than the costs the government incurred because of the defendant's breach.

Murphy, No. 19CR00043YGRDMR, 2020 WL 790407, at *6 (citing Famiglietti, 548 F. Supp. 2d at 407(internal quotations removed)).

Accordingly, there are no mitigating factors that support Defendant's and his sureties' arguments that the judgment must be set aside or modified.

E. The Sureties Understood Their Obligations

"A bail bond is a contract between the government and the defendant and his surety." United States v. Plechner, 577 F.2d 596, 598 (9th Cir. 1978) (citing United States v. Gonware, 415 F.2d 82 (9th Cir. 1969)); see also United States v. Toro, 981 F.2d 1045, 1048 (9th Cir. 1992) (bail bonds are contracts for liquidated damages). When a surety signs the bond, an affidavit, and a deed of trust on her home for the purpose of securing a bond, "[s]he cannot now complain that the obligations and risks were unknown to her." United States v. Noriega-Sarabia, 116 F.3d, 417,421 (9th Cir. 1997).

Ms. Cochell signed the surety affidavit and a deed of trust on her home. Dkts. 24, 28. She was aware of the obligations and the risks associated with serving as a surety as it is explicitly detailed in the affidavit she signed. Dkt. 24. Mr. Kennedy signed the surety affidavit and was also aware of the obligations and the risks. Dkt. 22. Neither surety should be permitted to forego their

1 responsibilities now that Defendant is a fugitive and the required
2 performance detailed in the contract has come due.

3 As Defendant's sureties concede, the reason courts consider
4 whether the surety is a professional is because a professional is
5 "more likely to be aware of the risks." Sur. Mot. at 9 (internal
6 quotations removed); see also Dkt. 199 at 10. Ms. Cochell's
7 declarations evidence that she understood her house might be at risk
8 if there was a violation of bond conditions. Dkts. 199-1, 221 Ex. A.
9 Similarly, Mr. Kennedy admits in his declarations that he was also
10 aware that he would lose the money he pledged if Defendant did not
11 comply with his bond conditions. Dkts. 199-2, 221 Ex. B. In addition,
12 Mr. Cochell, an attorney, has advised and spoken for Ms. Cochell and
13 Mr. Kennedy since Defendant's arrest, especially when discussing bond
14 and the collateral for bond. See Dkts. 90, 199, 221.

15 Both Ms. Cochell and Mr. Kennedy confirmed that they were aware
16 of Defendant's health issues. Dkts. 199-1, 199-2, 221 Ex. A-B. If the
17 health issues concerned them to a degree where they believed
18 Defendant would violate a bond condition, they should have contacted
19 the Court and voiced such a concern. They, however, failed to remove
20 themselves as his sureties and assumed the risks of being sureties
21 voluntarily and knowingly. See Murphy, No. 19CR00043YGRDMR, 2020 WL
22 790407, at *9.

23 **F. The Bond Amount Was Appropriate**

24 "The hallmark of a liquidated damage provision is reasonableness
25 at the time the agreement is made rather than a calculation of actual
26 provable losses when the breach occurs. See, e.g., Cal. Civ. Code §
27 1671 (validity of liquidated damage clauses). . . A match [between
28 cost to government and the bond] is not necessary and its lack does

1 not require that the bond be remitted in whole or in part." Amwest,
2 54 F.3d at 604-605; United States v. Abelian, No. 23-1266, 2024 WL
3 4182174, at *2 (9th Cir. Sept. 13, 2024) (citing Nguyen, 279 F.3d at
4 1117) (A bond is "like liquidated damages in that it must be
5 reasonable when set," and "it need not necessarily approximate the
6 actual costs of breach.").

7 A judge must set the amount of a bond based on "circumstance-
8 specific and defendant-specific considerations." Famiglietti, 548 F.
9 Supp. 2d at 414. Here, Judge Mircheff did exactly that. The
10 government filed a memorandum detailing Defendant's past
11 transgressions which illustrated that he was dishonest, that he was
12 aware of a possible criminal investigation against him, and that he
13 was a flight risk. See Dkt. 13. For example, the government provided
14 evidence that Defendant had a history of lying to the Court and
15 hiding assets in the civil FTC case. Id.

16 When the Court in the civil case confiscated Defendant's
17 passports, Defendant contacted the Irish embassy and procured another
18 passport against the Court's order. Id. Judge Otero determined that
19 Defendant was a flight risk and jailed him until he surrendered the
20 second passport he procured. Id. The government also provided
21 Defendant's social media posts where he claimed to be a millionaire
22 and billionaire. Id. These posts included pictures and videos of his
23 luxurious home in Dublin that included an elevator, his numerous
24 Rolex watches, and his travel on a private jet. Id.

25 The government also provided statements Defendant made when he
26 was arrested, including a statement where he "told arresting agents
27 that the FTC shut down his business in 2018, so the five year statute
28 of limitations would have passed for any charges." Id. at 10. These

1 statements illustrated that Defendant may have stayed in Ireland
2 through 2023 to avoid a possible arrest. As this Court determined,
3 "multiple references to a potential criminal investigation were made
4 during the pendency of [the civil] action." Dkt. 79 at 5. For these
5 reasons, the government requested Defendant be detained.

6 In addition, USPO submitted a report indicating that it believed
7 Defendant was a flight risk. Dkt. 90. In the report, USPO recommended
8 Defendant be held on a \$750,000 bond secured by two of Ms. Cochell's
9 properties, her primary residence and an investment property. Id.

10 After considering the arguments presented by the government,
11 USPO, Defendant, and Mr. Cochell, the Court determined that the bond
12 amount should be \$530,000 with Ms. Cochell jointly and severally
13 liable with Defendant in the amount of \$500,000 and Mr. Kennedy
14 jointly and severally liable with Defendant in the amount of \$30,000.
15 Ms. Cochell's portion was to be secured by her primary residence
16 while Mr. Kennedy's portion was unsecured. Dkt. 90. The Court
17 indicated that its decision was based on the Defendant's foreign ties
18 and his circumstances. Id. Specifically, the Court commented that
19 this was a unique bond package and that it made such a decision
20 because Defendant had no "skin in the game." Id. Neither Defendant
21 nor his attorneys disputed the bond amount or the release conditions
22 until Defendant became a fugitive. Id.

23 Defendant and his sureties now contend that the bond amount
24 should have been lower. Def. Mot. at 7; Sur. Mot. at 9. As discussed
25 in Famiglietti,

1 It follows that if courts are to give reality to the
2 rights of defendants that the [Bail Reform] Act
3 confers, they must not permit bond commitments, so
4 essential to pretrial release, to be eviscerated by the
5 magnitude of the potential impact on the surety. In
6 fact, *the greater that magnitude, the more meaningful*
7 *the bond commitment.*

8 . . .

9 {A} court may appropriately take into account, when
10 assessing the magnitude of the risk of flight and what
11 affect that risk should have on the amount of a bond,
12 the extent, recency, and purposes of the defendant's
13 international travel and how comfortable with or
14 adaptable to foreign cultures he seems to be. As noted
15 above, Mr. Famiglietti is a citizen of Panama, Italy,
16 and the United States. He lived in Panama for some 40
17 years. He has close relatives and owns property there.
18 He also lived in Italy for several years and has family
19 there. In addition, he has traveled extensively in
20 Europe and in Latin America. Pretrial Services Report,
21 March 6, 2007, at 2 and 4. He obviously has broad
22 language skills and would not be intimidated by the
23 prospect of living outside the United States. *These*
24 *factors also increased the risk of flight and put*
25 *additional upward pressure on the size of the bond.*

26 Famiglietti, 548 F. Supp. 2d at 410, 418 (emphasis added).

27 Defendant's risk of flight and foreign ties indicate that
28 the bond amount was reasonable at the time of issuance. In
fact, Defendant's failure to return as ordered by the Court
indicates that the bond amount could have been higher as the
pressure exerted on Defendant was not enough for him to comply
with the Court's orders and his release conditions. Id. at
409.

29 **G. The Motions to Dismiss are Irrelevant to Bond Forfeiture**

30 Defendant's and the sureties' argument that the outstanding
31 meritless motions to dismiss require the Court to stay or defer the
32 order to forfeit bond ignores the entire purpose of bail bonds. Def.
33 Mot. at 7; Sur. Mot. at 9. The purpose of bail bonds is to make sure
34 defendants show up for court and adhere to their release conditions.

1 See Vaccaro, 51 F.3d at 192; see also Famiglietti, 548 F. Supp. 2d at
2 409. Bond forfeiture proceedings are independent of the defendant's
3 underlying crime. See Vaccaro, 51 F.3d at 190 (9th Cir. 1995);
4 Southern Surety Co. v. United States, 23 F.2d 55, 57 (8th Cir.
5 1927) ("the defects or invalidity of the indictment constitutes no
6 defense to an action against the surety on a bond adjudged forfeited
7 for the failure of the principal to appear for trial or to comply
8 with other terms of the bond.") (citations omitted).

9 Defendant and his sureties argue that a consideration of the
10 reasonableness of the bond amount at the time of issuance is the
11 possibility of future motions to dismiss, but they provide no
12 authority that supports such an assertion. Def. Mot. at 7; Sur. Mot.
13 at 9. As detailed above, Judge Mircheff determined the reasonableness
14 of the bond amount based on Defendant's risk of flight and the fact
15 that he was not offering any of his own assets. Dkt. 90. The Court
16 was not obligated to foresee the possible future motions to dismiss,
17 especially the number of meritless motions that have been filed in
18 this case.

19 In addition, Defendant fails to acknowledge that this Court
20 entered tentative oral rulings denying the second motion to dismiss
21 and the motion to suppress. Dkt. 142. The third motion to dismiss
22 regarding Counts 3 and 4 improperly uses a Rule 12(b) motion to argue
23 a factual dispute. Dkts. 134, 136; See Dkt. 152. Defendant's fourth
24 motion to dismiss regarding Double Jeopardy related to Count 1 raises
25 an argument that has been denied in two different circuits and again
26 ignores established law. Dkts. 135, 137; See Dkt. 153.

27 Therefore, neither the order forfeiting bond nor the judgment
28 should be stayed or deferred.

1 **II. CONCLUSION**

2 Defendant is a fugitive who is willfully disobeying multiple
3 court orders and violating his release conditions. Justice requires
4 forfeiture. Defendant's motion to set aside or modify judgment and
5 the sureties' motion to set aside or modify judgment should be
6 denied.